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<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/552,576	OSWALD ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Chester T. Barry	1724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 4/16/04.
2. ☒ The allowed claim(s) is/are 2, 15, 16, 25-27, 34-45, 47-59, 61, 62, 64-73 and 75-78.
3. ☒ The drawings filed on 19 April 2000 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |  |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date <u>4/16/04</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material                              | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|   | 9. <input type="checkbox"/> Other _____.   |

Chester T. Barry  
571-272-1152 direct  
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An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

The application has been amended as follows:

IN THE CLAIMS

In claim 77, line 6, "at least 1.5 – 2.5" was changed to – at least 1.5 –.

The following is an examiner's statement of reasons for allowance:

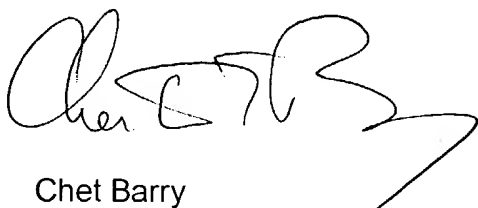
In light of Applicants' responsive arguments, Sheaffer and Locklair do not suggest the "at least 6 m" limitation. While USP 4388186 to FUJIMOTO at col 5 line 54 to col 6 line 5 teaches an increase in "methane production efficiency" resulting from use of a deep well type anaerobic digester deeper than about 10 m, i.e., 10 m – 100 m (col 5 lines 27-28), said digester comprising a centrally located fermentation pit surrounded by a shallower "head tank 235" pond (i.e., the above-ground portion), FUJIMOTO is directed not to facultative ponds but rather strictly to fully enclosed anaerobic digesters (col 5 line 43, fig. 1 lid shown on head tank 235). It seems that only impermissible hindsight would have motivated the skilled artisan to metaphorically "dig Oswald's pit deeper" to accomplish Fujimoto's promise of increase methane production efficiency given Oswald's open-top facultative pond and Fujimoto's closed "strictly anaerobic" tank approach.

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Intervening USP 6395173 teaches that biogas-producing digesters can have depths of 6 m (col 2 line 59), but the reference isn't directed to fermentation pits surrounded by an outer pond.

Oswald discusses the effects of "wind mixing" (p 288 penultimate line), as does USP 4039439 to Clark, but Clark does not suggest the claimed invention.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

A handwritten signature in black ink, appearing to read "Chet Barry", with a large, stylized flourish extending from the end of the signature.

Chet Barry

1724

**CHESTER T. BARRY**  
**PRIMARY EXAMINER**

571-272-1152